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12 Communities of Arizona

13 **IN THE SUPREME COURT**
14 **STATE OF ARIZONA**

15 In the Matter of:

Supreme Court No. R-19-0018

16 PETITION TO AMEND RULE 5(d) AND
17 RULE 10(a), ARIZONA RULES OF
18 PROCEDURE FOR EVICTION
19 ACTIONS

COMMENTS OPPOSING PROPOSED
AMENDMENTS TO RULES 5 AND 10 OF
THE ARIZONA RULES OF PROCEDURE
FOR EVICTION ACTIONS

20 Commenting Party Manufactured Housing Communities of Arizona (“MHCA”)¹
21 hereby opposes the Petition to Amend Rules 5(d) and 10(a) of the Arizona Rules of
22 Procedure for Eviction Actions (“RPEA”) filed by the State Bar of Arizona on or about
23 January 10, 2019 (the “Proposal”) for the following reasons:

- 24 1. The Proposal needlessly requires a massive waste of time and resources. If adopted, a
25 mobile home park landlord, with its eviction action complaint, would—at the least—
26 be required to file: (a) its entire rental agreement and all addenda thereto; (b) a copy
of the park’s Rules and Regulations; (c) a copy of the park’s Statements of Policy; (d)

¹ MHCA is a non-profit organization that protects and promotes the interests of Arizona’s
manufactured housing community owners. Manufactured housing communities are one of
Arizona’s greatest sources of low-cost/low-income housing. MHCA is the largest
manufactured housing community owners’ association in the state.

1 a copy of the Acknowledgement of Receipt signed by the tenant; and (e) a copy of all
2 required disclosures, because all such items meet the definition of the “lease and any
3 addendums.” Depending on the forms the landlord uses, these disclosures *alone*
4 (excluding other items of evidence that may be used at trial) in most cases would
5 range between 50 to 100 pages. The vast majority of eviction actions result in default
6 judgments—thus, millions of pages (5.5 million pages per year in cases resulting in
7 default judgments for undersigned counsel’s firm alone) of needless disclosure will
8 have been gathered and organized by attorneys, copied, filed and organized by court
9 clerks, and served by process servers (who require multiple copies of the complaint)
10 only to, in most cases, obtain default judgments against tenants who do not appear.
11 Of those that do not proceed by default, a substantial number are dismissed before the
12 initial hearing.

- 13
14 2. The Proposal requires disclosure of tenants’ confidential and household information
15 in court pleadings, before any hearing has occurred and regardless of whether the
16 action is contested. Many leases contain all tenants’ and occupants’ names and dates
17 of birth (including minor children) and other private information. Accounting ledgers
18 may contain private financial information—check numbers, bank account numbers,
19 and the like. All of this personal information would be filed with the court and
20 available to anyone requesting it. And, in many cases, as required by statute, it would
21 all be taped to the tenant’s front door.
- 22 3. Adoption of the Proposal would increase the costs of service of process and attorneys’
23 fees incurred by landlords in eviction actions. Simply, it costs more money to copy,
24 file, and serve a complaint consisting of 100+ pages than it does to file a complaint
25 consisting of two pages. This would result in landlords seeking higher monetary
26 judgments (due to the higher costs and fees) against tenants in evictions, and,
27 ultimately, will result in rent increases to tenants to cover the increased costs.
28

- 1 4. No other area of the law requires a plaintiff to file all exhibits it anticipates it might
2 use at trial with its complaint or face the sanctions of exclusion of evidence or
3 dismissal. **Even in felony criminal cases where the death penalty may be sought,**
4 **the state is not required to submit all of its evidence with the complaint,**
5 **indictment, or information.** Arizona is a notice pleading state, and the RPEA
6 already requires a plaintiff to attach a copy of the termination notice to the complaint
7 and specify the reason for the eviction along with detailing all amounts owed or
8 specific facts regarding non-compliance. **Rule 10, RPEA already requires**
9 **disclosure upon the request of either party at any time after the complaint is**
10 **filed.** Nothing in the Petition provides any fact-based justification for requiring that
11 all evidence be attached to the complaint. No specific instances are alleged where a
12 plaintiff landlord has refused to provide disclosure; moreover, sanctions (already set
13 forth in Rule 10, RPEA) and bar complaints would be available remedies in that
14 situation.
- 15 5. The Proposal imposes a one-sided disclosure obligation: its requirements are only
16 imposed on plaintiffs. Nothing requires the defendant in any eviction action to
17 include copies of all evidence with the Answer or face sanctions. No other area of the
18 law imposes one-sided disclosure obligations.
- 19 6. The Proposal allows draconian sanctions against plaintiffs who fail to include all
20 exhibits with their complaint without undefined “good cause”—including, *inter alia*,
21 exclusion of the evidence or dismissal. In many non-compliance cases, all exhibits
22 are not available when the complaint is filed (for example, police reports, videos, or
23 logs supporting an immediate eviction for criminal activity). Further, landlord
24 plaintiffs do not necessarily know what exhibits they will present until they learn the
25 tenant’s defense. And, in some cases the landlord cannot obtain evidence without the
26 issuance of a subpoena, which cannot be done until the case is filed.
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I. BACKGROUND

The RPEA were drafted by the Arizona State Bar Landlord/Tenant Task Force Rules Committee between 2007 and 2009. Committee members extensively debated and vetted the existing rules. Rather than alleging specific problems with violations of existing disclosure rules, the Proposal claims that many tenants do not have copies of their rental agreements, and that this makes it difficult for them to defend themselves or for attorneys to help them. The Proposal also includes a cut-and-paste of the same justifications provided in every proposal made by the State Bar and other tenant advocates to amend the RPEA: that tenants have a property interest in their residences, and the perils of homelessness after eviction. Nothing new is stated identifying any specific, evidence-based problem with landlords in eviction actions refusing to provide disclosure. The Proposal merely states that there is a problem without presenting a shred of evidence. Although hardship provokes sympathy, it is not the basis for a court procedural rule, much less one that will *vastly* increase the costs of all evictions, overwhelm courts with millions of needless pages of disclosure, allow dissemination of tenants' personal and financial information, and ultimately lead to higher rents.

II. THE PROPOSAL

The Proposal appears to require landlord plaintiffs, in every eviction lawsuit, to file "a copy of any lease and any addendums" with the complaint.² For non-payment evictions, the landlord would also be required to file—with the complaint—a six-month accounting ledger. For any non-compliance eviction, the landlord would be required to file "the documents and exhibits the plaintiff intends to present or reply [sic] upon at the trial." If such documents are not filed with the complaint and no undefined "good cause" exists, the Proposal includes sanctions against the plaintiff including "granting a continuance, excluding evidence not

² The proposed language in the Petition's Appendix states that these documents shall be "served" with the complaint; but the Petition states that such items should be "of record" or "in evidence" in "virtually every case." Even if the intent is for such items to be served but not filed, the same problems remain—waste of resources, higher costs and attorneys' fees, and dissemination of tenants' personal information.

disclosed, and sanctioning plaintiff up to and including dismissal of the complaint.” The sanction chosen is left to the judge’s discretion. No similar provision is proposed to require defendants to file all exhibits with their Answer, or to provide sanctions for failure to do so.

III. THE PROPOSAL REQUIRES A MASS WASTE OF TIME AND RESOURCES AND WILL CAUSE EVICTION ACTION COMPLAINTS TO EXPAND FROM TWO PAGES TO, IN MANY CASES, 50+ PAGES.

The Arizona Mobile Home Parks Residential Landlord and Tenant Act requires mobile home park landlords not only to have space rental agreements with tenants, but also Rules and Regulations, Statements of Policy, utility disclosures (of rates of separately-billed utilities, and of types, sizes, and power ratings of utility connections), a state-published summary of the Arizona Mobile Home Parks Residential Landlord and Tenant Act, and a three-year rent increase history disclosure. Many of these documents are referenced and incorporated into the rental agreement—thus, in every mobile home park eviction filing, it appears that all such documents would be required to be attached to the complaint. Indeed, A.R.S. § 33-1409(26) defines “rental agreement” as including “leases or agreements and valid rules adopted under section 33-1452 embodying the terms and conditions concerning the use and occupancy of a mobile home space and premises . . .” While the lengths of such documents vary from park to park, the average total number of pages of all such documents ranges between 50 to 100 pages.³

If the complaint is for non-compliance, the landlord will also be required to file with the complaint all exhibits related to the non-compliance—often this consists of numerous color photographs of violations taken before a notice is served, after the cure period of the notice has expired, and the day before filing the lawsuit; communications with the tenant; logs kept by the landlord; complaints from other tenants; and video or audio recordings of incidents. This will add countless more pages and attachments such as USB drives or CDs

³ Residential landlords, too, often have lengthy lease documentation. The National Apartment Association’s standard lease form, with addenda, is over 100 pages. Many large apartment operators use lease forms of well over 30 pages, exclusive of addenda.

1 to the complaint and, in many cases, require the use of a color copier.

2 The sheer volume of paperwork to be filed, managed, and scanned at the courthouse
3 will overwhelm court clerks and will likely require the hiring of additional court personnel.
4 Further, landlords will spend more money on copying, service of process, and attorneys' fees
5 due to the time required to identify and organize the exhibits to be used, assemble the
6 complaint, make six copies, and file and serve the complaint and all of its attachments.

7 The Petition ignores reality: *the vast majority of eviction actions result in default*
8 *judgments*. Of the remaining cases, **many are: (1) uncontested, resulting in either a**
9 **guilty plea or stipulated judgment; or (2) voluntarily dismissed by the landlord before**
10 **the initial hearing date (most often due to tenants' full payment).** In other words,
11 landlord plaintiffs would be required to pay to prepare and file millions of pages of
12 documents with the court and have those documents copied and served on tenants, and court
13 clerks would be required to intake and scan those documents, only to have such documents
14 become entirely unnecessary because the case never proceeds to a contested trial.

15 Undersigned counsel's firm is one of the larger filers of evictions in Arizona.
16 Williams, Zinman & Parham's data reflects that from the last 79,908 eviction lawsuits it
17 filed on behalf of clients, 23.56% of those cases were *dismissed* before the hearing date—
18 representing approximately 19,178 tenants who, under this Proposal, would have their
19 confidential information disseminated throughout the court system and their home despite
20 their case not going forward. Further, each time a case is sent for filing, *six copies are*
21 *made—one to file; one to conform; and four for the defendants (assuming a household*
22 *with two tenants), as often one copy must be posted for each tenant and one copy mailed to*
23 *each tenant (certified, return receipt requested).* Assuming 50 pages per complaint (a low
24 estimate in many cases), if approximately 19,178 cases are dismissed, this results in a waste
25 of approximately 5,753,400 pages. This statistic does not even account for the majority of
26 cases, which result in default judgments and will result in an even larger waste of paper, ink,
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1 time, machinery, effort, and money when such disclosure is irrelevant.

2 Not only will all of this printing and copying waste paper, ink, and time, but because
3 many evictions are ultimately posted and mailed to tenants certified mail, return receipt
4 requested, mailing costs will skyrocket—increasing from approximately \$13.60 for mailing
5 two envelopes certified, return receipt requested, to approximately \$136.00 to mail two
6 envelopes certified, return receipt requested (assuming a 50-page complaint).

7 The Petition contends that this Proposal is necessary because tenants seeking legal
8 counsel *might* not have copies of their own rental documentation. The Petition gives no
9 specific examples. Yet, the majority of tenants are not represented. Moreover, pursuant to
10 Rule 10, RPEA, any tenant or tenant’s attorney can already contact the plaintiff or plaintiff’s
11 attorney to request disclosure, including copies of the rental agreement and all other relevant
12 documentation—even before the initial hearing date—and the current rule provides for
13 sanctions for failure to comply with disclosure obligations.

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15 Nowhere does the Petition provide any examples of plaintiffs’ attorneys who have
16 refused to provide copies of rental or other relevant documentation to a tenant or tenant’s
17 legal counsel upon request. Furthermore, any plaintiff’s attorney refusing to provide such
18 disclosure would be subject to an ethical complaint in addition to sanctions. Additionally,
19 A.R.S. § 33-1413(B) requires a mobile home park landlord to give the tenant a copy of the
20 tenant’s rental agreement after execution; if this statute was violated, the tenant could serve
21 the landlord with a non-compliance notice.

22 Rather than solving an existing problem, the Proposal *creates* serious problems—the
23 waste of millions of pieces of paper, the overwhelming of the courts, the tremendously
24 increased costs to landlords (which, ultimately, will be passed on to tenants through amounts
25 sought for attorneys’ fees and costs in evictions, and through rent increases), and the
26 disclosure of tenants’ personal information.

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1 **IV. THE PROPOSAL REQUIRES UNNECESSARY DISCLOSURE OF TENANTS' PERSONAL**
2 **INFORMATION.**

3 The Proposal fails to take into account the fact that rental agreements normally
4 contain tenants' full names and dates of birth *and* the names and dates of birth of all
5 members of their households, including any minor children. Rental documentation
6 occasionally includes social security numbers, which will require careful up-front redaction
7 efforts. Account ledgers may contain detailed payment information—check numbers, bank
8 account numbers, and the like. Exhibits that would be required to be filed and served with
9 the complaint in non-compliance evictions may contain information the tenant would not
10 want the general public to know (for example, embarrassing photographs of the inside of a
11 hoarder's park-owned mobile home in an eviction for a health and safety violation; or
12 detailed information about a tenant's bedbug infestation). All of this documentation would
13 be filed with the court, becoming public record available to anyone who requests it, and may
14 even be posted on the tenant's door when the complaint is served—even if the tenant has no
15 intention of disputing the eviction action.

16 **V. THE PROPOSAL WILL RESULT IN MORE EXPENSIVE EVICTIONS.**

17 Though at first blush tenant advocates may find the proposition of more expensive
18 evictions attractive, landlords incurring higher attorneys' fees and costs will seek those
19 higher attorneys' fees and costs in their eviction action complaints. More expensive
20 evictions will lead to the inability of tenants to pay all amounts owed prior to judgment and
21 stay in the rental property, as well increased rents due to many landlords passing such costs
22 on to tenants.

24 **VI. THE PROPOSAL WOULD CREATE DISCLOSURE OBLIGATIONS UNSEEN IN ANY**
25 **OTHER AREA OF THE LAW.**

26 The Proposal appears to require the plaintiff in every eviction lawsuit to file all of its
27 exhibits with the complaint and serve them on the defendant—before it is known whether
28 the defendant will appear and contest the case. This is unheard of in any other area of the

1 law.

2 In civil cases under the Arizona Rules of Civil Procedure, the complaint must “give
3 the opponent fair notice of the nature and basis of the claim and indicate generally the type
4 of litigation involved.” *See Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, 189 P.3d
5 344, 346 (2008). Rule 8, Ariz. R. Civ. P., states that a pleading must contain a short and
6 plain statement of the grounds for the court’s jurisdiction; a short and plain statement of the
7 claim showing the pleader is entitled to relief; and a demand for relief. Nothing requires
8 plaintiff litigants to front-load their complaints with every item of evidence they intend to
9 use at trial—or even the contract alleged to have been violated in breach of contract cases.

10 Even in felony criminal cases, where a defendant’s liberty or *life* may be at stake, the
11 state “must make available” to the defendant all police reports related to the offense by the
12 date of the preliminary hearing or arraignment (occurring *after* the complaint, information,
13 or indictment). *See* Ariz. R. Crim. P. 15.1(a). The state is not required to provide the
14 criminal defendant in a felony case with copies of all exhibits intended to be used at trial
15 with the complaint, information, or indictment. *See id.* After the preliminary hearing or
16 arraignment, the state is not required to make disclosure of its other evidence until 30 days
17 before trial or 30 days after the defendant’s request. *See* Ariz. R. Crim. P. 15.1(b).

18 The Petition indicates that eviction actions in which all proposed exhibits are not
19 attached to, filed, and served with the complaint deprive tenant defendants of due process.
20 Yet, it is well-established that the essential requirements of due process are “notice
21 reasonably calculated, under all the circumstances, to apprise interested parties of the
22 pendency of the action and to afford them an opportunity to present their objections.”
23 *Matter of Appeal in Maricopa County Juvenile Action No. JS-501904*, 180 Ariz. 348, 355,
24 884 P.2d 234, 240 (App. 1994).

25 It is also well-established that an eviction action is a summary, speedy remedy for
26 obtaining possession of premises. *See Mason v. Cansino*, 195 Ariz. 465, 990 P.2d 666, 667
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(App. 1999). An eviction action proceeds in a similar manner as any other civil lawsuit, but moves faster because possession of the property is at issue. This has logical underpinnings—often, landlords are losing money (and could, in some cases, face foreclosure), or facing other serious problems (for example, a person who assaulted someone remaining at their property; or a mobile home with serious electrical problems remaining at the property and creating a fire hazard) every day their property remains occupied by a person who has failed to pay the rent or has failed to comply with the lease, rules, or a health and safety code.

With regard to due process, the existing RPEA already require and/or allow, *inter alia*:

- That a good faith basis exist before the plaintiff files the action, and that the relief sought be consistent with the rental agreement or law;
- That all required notices (pursuant to the applicable landlord-tenant act or statute) have been properly served before filing;
- That every action in the eviction lawsuit be taken in “good faith”;
- That a summons be issued identifying the defendants, the court, its address and phone number, and the time and date that the case will be heard, and advising the defendants that if they fail to appear, a default judgment will likely be entered;
- That the Residential Eviction Procedures Information Sheet (which provides information about the eviction process) be served on the defendant with the Summons and Complaint;
- That the Complaint:
 - State “the specific reason for the eviction”;
 - State that the defendant was “served a proper notice to vacate” and state the date and manner of service of the notice;
 - Include a copy of the termination notice served on the defendant as an exhibit;

- If money is sought, state the frequency with which rent is paid, the due date for payment, the amount of rent due on each date, the method of calculating late fees, the total amount of rents, late fees and other fees, charges, or damages permitted by law, the amount of any concessions sought, the amount of any attorneys' fees sought, and if subsidized housing is involved, that the lease so state and detail what part the tenant owes;
- If a non-compliance case, state the "reason for termination of the tenancy with specific facts, including the date, place and circumstances of the reason for termination, so the tenant has an opportunity to present a defense."
- Be properly served on the defendant;
- The defendant to file an answer on or before the initial hearing date, or provide an oral answer;
- For motions to be made;
- *For disclosure upon either party's request—which already includes requirements that the plaintiff provide a copy of the lease; a list of witnesses and exhibits; a six-month accounting of charges and payments; and copies of any documents to be used as exhibits at trial—and which also allows for depositions, inspections, and production of documents if such discovery does not delay the times set by statute, and for subpoenas to compel testimony or document production;*
- For an initial hearing at which the tenant defendant may contest the complaint's allegations and raise any legal defenses;
- For the case to be continued (except for immediate evictions, which usually involve criminal conduct) for up to three days for trial;
- For trials by jury if properly requested and if factual issues exist for a jury's decision;
- For the judge to make required determinations before entering judgment—including, *inter alia*, whether service was proper and timely; whether a proper termination notice

1 was served and the cure period honored; whether the facts alleged are sufficient to
2 provide the plaintiff a superior right to possession; whether a partial payment has
3 been accepted; and whether subsidized rent is involved and what amounts are
4 properly awarded;

- 5 • Processes for execution of the writ of restitution, for motions to set aside or vacate the
6 judgment, and for appeals.

7 All of these procedural safeguards, already built into the RPEA, provide for notice and an
8 opportunity to be heard.

9 Requiring plaintiffs in an eviction action to serve hundreds of unnecessary pages of
10 rental documentation and all of their exhibits before the initial hearing date is burdensome,
11 unnecessary, wasteful, costly, and not justified by any genuine due process concern—
12 particularly where odds are always extremely high that the defendant tenant will not appear
13 in court or will appear and not contest the case.

14 **VII. THE PROPOSAL'S DISCLOSURE OBLIGATIONS ARE ONE-SIDED.**

15 The Proposal only requires the *plaintiff* to disclose all of its evidence with its initial
16 pleading. Nothing in the Proposal requires the defendant to provide copies of all exhibits
17 intended to be used at trial with an Answer. The undersigned is unaware of any other area of
18 the law that imposes a one-sided disclosure obligation—particularly one that punishes the
19 only party forced to make such disclosure with sanctions up to and including exclusion of
20 evidence or *dismissal of the case* if the evidence is not disclosed with the complaint.
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22 **VIII. EXHIBITS MAY NOT YET EXIST OR MAY BE UNAVAILABLE WHEN THE COMPLAINT IS** 23 **FILED.**

24 The Proposal sets forth sanctions for failure to attach all exhibits to be used at trial to
25 the complaint. For various reasons, exhibits to be used at trial are not always available at the
26 filing of the complaint. In an immediate eviction for criminal conduct, the landlord may
27 know what occurred but not yet have a copy of the police report, or may not yet have put
28 surveillance video onto a USB drive or CD, or may not yet have obtained videos or audio

1 recordings, logs, or contemporaneous statements from witnesses. Other non-compliance
2 evictions face similar challenges.

3 In some cases a subpoena must be issued to obtain evidence, which cannot be done
4 until *after* the complaint is filed. Any subpoena places a burden on the party to whom it is
5 issued. The Proposal would require that the subpoena be filed before the plaintiff knows
6 whether the documents will even be needed—because the plaintiff does not know the
7 tenant’s defense or whether the tenant intends to contest the case at all.

8 The Proposal gives the judge full discretion to simply exclude all such evidence, or to
9 dismiss the case—punishing the plaintiff for failing to comply with bizarre front-loading
10 disclosure requirements unseen in any area of the law.

11 **IX. JUSTICE OF THE PEACE RESPONSE TO THE PROPOSAL**

12 While the MHCA agrees with some of the concerns raised in the Response filed by
13 Justices of the Peace Keith Russell, Gerald Williams, and Charles Adornetto (the waste of
14 resources and dissemination of confidential information), it disagrees with some of their
15 proposed solutions. MHCA sees no problem with adding language to the REIS informing
16 tenant defendants that if they meet with an attorney, they should bring copies their lease and
17 any notices.

18 MHCA disagrees, however, with the proposal to amend Rule 5(d), RPEA, to require
19 plaintiff landlords to give tenant defendants legal advice in the complaint pleading by
20 advising tenants of what disclosure items are available on request and how they may be
21 obtained. Moreover, this proposal arguably violates A.R.S. §§ 33-1404(D), 33-1305(C), 33-
22 2101(C), and 33-361(F), which prohibit a court from adopting a rule that requires a
23 mandatory or technical form for pleadings in an eviction action.

24 And, the Justices of the Peace’s proposed amendment to 5(d) appears to require the
25 plaintiff to identify what disclosure items are available or anticipated to be used—when this
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1 is not always known when the complaint is filed. Again, without knowing what defense
2 may be raised, it is impossible to know what exhibits will be necessary.

3 Finally, with regard to the Justices of the Peace’s proposal to amend Rule 5(1),
4 MHCA’s members have not observed—and are unaware—of any need to clarify the ability
5 of a tenant defendant in an eviction solely for non-payment of rent to pay to the landlord all
6 amounts owed before judgment is entered, and require dismissal of the case.

7 **X. ACAJ RESPONSE TO THE PROPOSAL**

8 A review of the membership list for the Arizona Commission on Access to Justice
9 (“ACAJ”) reflects that no landlords or landlord attorneys are represented. Several members
10 are tenant advocates.

11 MHCA disagrees with the ACAJ’s statement that “[t]he suggestion that tenants can
12 obtain information by requesting same from the landlord or property manager” is “illusory.”
13 ACAJ suggests that it is “impractical” to “expect a tenant” to timely track down documents
14 from “often-unavailable landlords or property managers.” The majority of Arizona’s mobile
15 home parks have on-site property managers who are required to attend mandatory training
16 within six months of first hire, and to renew such training every two years. It is unclear why
17 a tenant would always be incapable of contacting the on-site manager, any other property
18 manager, or the landlord’s attorney (in cases where the landlord is represented) to request
19 copies of documents before court, as already permitted by Rule 10, RPEA, and as already
20 occurs in many cases. If the landlord makes itself unavailable or refuses to provide
21 documents, Rule 10, RPEA already allows for a continuance or other sanctions. Unproven
22 speculation about landlord unavailability is not the basis for a court procedural rule that will
23 have a *drastic* effect on the cost of evictions and ultimately, the rent tenants pay.
24

25 ACAJ suggests that, to address “concerns raised by the housing industry,”⁴ the
26 Proposal’s suggested Rule 5(d)(3) should be amended to require attachment to the complaint

27 ⁴ According to the applicable association executives, the ACAJ has not contacted MHCA or
28 the Arizona Multihousing Association, which are the two largest rental housing industry
associations in the state.

of “only those portions of the lease and any addendum that are related to the underlying basis for the proposed eviction.” This will not resolve the concerns raised in these Comments. Attorneys representing landlords will still be required to spend additional attorney time reviewing the entire rental agreement, all addenda, and any other documents (Rules and Regulations, Statements of Policy, etc.) to determine which portions must be disclosed and attached to/filed with the complaint. In non-compliance cases, complaints will still consist of 50 or more pages, as set forth above, as all exhibits to be used at trial will have to be disclosed. Again, this is where the majority of cases result in default judgments, and many of the remaining cases are uncontested or dismissed before trial. Millions of pages of unnecessary disclosure, and higher expenses due to increased time for attorney review and organization, will still result from ACAJ’s suggested modifications.

ACAJ’s statement that there is “no practical ability to conduct traditional discovery in an eviction case” is false. Rule 10, RPEA requires either party, *upon request*, to provide the documents that will be used at trial, including but not limited to the lease, six-month ledger, and a list of witnesses and exhibits. Undersigned’s counsel’s firm regularly makes such disclosure upon receiving requests from tenants or their attorneys. Rule 10 also allows for other discovery. Generally, such discovery occurs on an expedited basis because of the statutory time frames allowed for evictions—which, again, exist because landlords are generally being deprived of their property by non-paying or non-compliant tenants throughout the eviction process. The existing Rule 10 makes practical sense because discovery is generally only requested by tenants who actually intend on contesting a specific element of the eviction—rather than forcing the landlord to make millions of pages of pointless and costly disclosure in uncontested cases.

XI. CONCLUSION

Simply, the Proposal presents no evidence demonstrating why the production of millions of documents is necessary when the majority of eviction lawsuits result in default

1 judgments or dismissals, and the RPEA already impose disclosure obligations on both
2 parties. The Proposal should be denied as it will cause extreme harm and expense.

3 RESPECTFULLY SUBMITTED this 1st day of May, 2019.

4 **WILLIAMS, ZINMAN & PARHAM P.C.**

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12 A copy of these comments has been mailed
13 this 1st day of May, 2019 to:

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19 /s/ Melissa A. Parham
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